

**IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF MISSOURI
SOUTHEASTERN DIVISION**

THE STATE OF MISSOURI,
ex rel. ERIC S. SCHMITT, in his official
capacity as Missouri Attorney General,

Plaintiff,

v.

THE PEOPLE’S REPUBLIC OF CHINA,
THE COMMUNIST PARTY OF CHINA,
NATIONAL HEALTH COMMISSION
OF THE PEOPLE’S REPUBLIC OF
CHINA, MINISTRY OF EMERGENCY
MANAGEMENT OF THE PEOPLE’S
REPUBLIC OF CHINA, MINISTRY OF
CIVIL AFFAIRS OF THE PEOPLE’S
REPUBLIC OF CHINA, PEOPLE’S
GOVERNMENT OF HUBEI
PROVINCE, PEOPLE’S GOVERNMENT
OF WUHAN CITY, WUHAN INSTITUTE
OF VIROLOGY, and CHINESE
ACADEMY OF SCIENCES,

Defendants.

Case No. 1:20-cv-00099-SNLJ

**PLAINTIFF’S MOTION FOR ENTRY OF CLERK’S DEFAULT AGAINST
DEFENDANTS THE PEOPLE’S REPUBLIC OF CHINA AND FIVE OTHER
GOVERNMENTAL DEFENDANTS**

Plaintiff State of Missouri ex rel. Eric S. Schmitt (“Missouri”) respectfully requests that this Court direct the Clerk of the Court enter defaults against six Defendants: the People’s Republic of China and five of its political subdivisions. On May 11, 2021, after China lodged a frivolous objection to service under the Hague Convention, this Court entered an order authorizing alternative methods of service. Doc. 22. Consistent with that order, on October 7, 2021, Missouri effected service of process on these Defendants through diplomatic means as provided in 28 U.S.C. § 1608(a)(4). *See* Docs. 36-41. Foreign states and their political subdivisions have 60 days in

which to file an answer or other responsive pleading, 28 U.S.C. § 1608(d), and so these Defendants were required to answer no later than December 6, 2021. None of these Defendants has appeared or filed any responsive pleading, so the Clerk should enter defaults against these six remaining Defendants under Rule 55(a) of the Federal Rules of Civil Procedure.

ARGUMENT

On October 7, 2021, Plaintiff the State of Missouri ex rel. Eric S. Schmitt executed service of process on six governmental defendants: (1) the People’s Republic of China, (2) the People’s Government of the Hubei Province, (3) the Ministry of Civil Affairs of the People’s Republic of China, (4) the Ministry of Emergency Management of the People’s Republic of China, (5) the National Health Commission of the People’s Republic of China, and (6) the People’s Government of Wuhan City (collectively, the “Chinese Governmental Defendants”). Docs. 36–41. As noted on the docket, the Chinese Government Defendants were required to appear and file a responsive pleading no later than December 6, 2021. *See id.* None of the Chinese Government Defendants has appeared to defend this lawsuit. These defendants are now in default.

“When a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend, and that failure is shown by affidavit or otherwise, the clerk must enter the party’s default.” Fed. R. Civ. P. 55(a). The clerk’s entry of default is a necessary precursor to obtaining a default judgment against the defaulting party. *See* Fed. R. Civ. P. 55(b)-(c). Here, the Chinese Governmental Defendants’ failure to plead or otherwise defend is shown by the diplomatic notes from the U.S. Consul confirming service of process by diplomatic means on October 7, 2021, *see* Docs. 36-41, and by the absence on the docket of any appearance or responsive pleading for any of these Defendants by December 6, 2021. More than sixty days have elapsed since Plaintiff validly served the Chinese Governmental Defendants. They have not

appeared or filed any responsive pleading, and thus they are in default under Rule 55(a). The Clerk of the Court must enter each party's default. *Id.*

On October 7, 2021, Missouri served the Chinese Government Defendants in accordance with 28 U.S.C. § 1608(a)(4) and 22 C.F.R. § 93.2. This method of service satisfied Rule 4(j), which governs service on a foreign government or its political subdivision, agency, or instrumentality. Fed. R. Civ. P. 4(j). Under Rule 12, a litigant typically has 21 days after service in which to file a responsive pleading, “unless another time is specified by this rule or a federal statute.” Fed. R. Civ. P. 12(a)(1)(A)(i). Here, by statute, a foreign state and its political subdivisions have 60 days from service in which to file a responsive pleading: “In any action brought in a court of the United States, ... a foreign state, a political subdivision thereof, or an agency or instrumentality of a foreign state shall serve an answer or other responsive pleading to the complaint within sixty days after service has been made under this section.” 28 U.S.C. § 1608(d). Missouri's summonses noted that the deadline to respond to the complaint is 60 days after service for foreign states, their political subdivisions, and their agencies and instrumentalities. *See* Docs. 5, 8-12. Missouri served each of the Chinese Government Defendants on October 7, 2021, *see* Docs. 36-41, and the docket reflects that the latest potential date on which responsive pleadings were due fell on December 6, 2021. *See id.* As of that date and through today, none of these six defendants has entered or filed any responsive pleading.

Accordingly, the Chinese Governmental Defendants have “failed to plead or otherwise defend,” as shown by the returned diplomatic notes with executed summonses and those Defendants' subsequent failure to respond within 60 days. Consequently, “the clerk must enter the party's default.” Fed. R. Civ. P. 55(a); *see also, e.g., Owens v. Republic of Sudan*, 826 F. Supp. 2d 128, 148 (D.D.C. 2011) (noting that “defendants did not respond or make an appearance within

60 days, and thus, pursuant to § 1608(d), the Clerk entered default against defendants”). The Clerk has previously entered defaults against the other three Defendants in this case, *see* Doc. 29, and it should do so against these remaining six Defendants as well.

CONCLUSION

For the reasons stated, Plaintiff Missouri ex rel. Eric S. Schmitt respectfully requests that this Court order the Clerk to enter defaults under Rule 55(a) of the Federal Rules of Civil Procedure against defendants the People’s Republic of China, the People’s Government of the Hubei Province, the Ministry of Civil Affairs of the People’s Republic of China, the Ministry of Emergency Management of the People’s Republic of China, the National Health Commission of the People’s Republic of China, and the People’s Government of Wuhan City.

Dated: December 8, 2021

Respectfully submitted,

ERIC S. SCHMITT
ATTORNEY GENERAL

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